

## Message Text

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ACTION L-03

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FM AMEMBASSY LAGOS

TO SECSTATE WASHDC 3434

UNCLAS LAGOS 2842

E.O. 11652: N/A

TAGS: PFOR

SUBJ: PENDING SOVEREIGN IMMUNITY LEGISLATION

REF: STATE 26018

1. AFTER CONSULTATION WITH LOCAL LAWYER KNOWLEDGEABLE  
IN LOCAL LAW RELATING TO SOVEREIGN IMMUNITY EMBASSY  
SUBMITS ANSWERS TO QUESTIONS RAISED REFTEL.

2. IN ANSWERING QUESTIONS IT IS EMBASSY'S UNDER  
STANDING THAT REFERENCE TO LOCAL GOVERNMENT MEANS  
FEDERAL GOVERNMENT, STATE GOVERNMENTS, INCLUDING  
FEDERAL AND STATE DEPARTMENTS. EMBASSY HAS EX-  
CLUDED STATE CORPORATIONS OR OTHER PARASTATAL  
ORGANIZATIONS IN WHICH GOVERNMENT HAS AN INTEREST  
SINCE SUCH BODIES COULD AS A REULE SUE AND BE SUED  
SUBJECT TO THE GIVING OF STATUTORY NOTICE AS RE-  
QUIRED BY THE LAW ESTABLISHING SUCH BODIES.  
THEREFORE ANSWERS GIVEN THEREAFTER RELATE TO  
ACTIONS AGAINST GOVERNMENT AND GOVERNMENT  
MINISTRIES.

3. RE PARA 2 REFTEL SECTIONS A,B,C, NIGERIAN LAW  
IS THAT CLAIMS AGAINST THE GOVERNMENT OR ANY  
DEPARTMENT OF THE GOVERNMENT COULD BE BROUGHT  
BY PETITIONS OF RIGHT. THE RELEVANT NIGERIAN  
LEGISLATION IS THE POTITION OF RIGHTS ACT CAP.

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QRO OF THE 1958 LAW OF THE FEDERATION OF

NIGERIA AS AMENDED BY LEGAL NOTICE 112/64 OF  
1964. UNDER THIS LAW IT IS PROVIDED IN SECTION  
3 THAT-

"ALL CLAIMS AGAINST THE GOVERNMENT OF THE  
FEDERATION OR AGAINST ANY MINISTRY OR  
DEPARTMENT THEREOF BEING OF THE SAME NATURE

-----  
WHICH BEFORE THE COMMENCEMENT OF THE CROWN  
PROCEEDINGS ACT 1947 OF THE PARLIAMENT OF  
THE UNITED KINGDOM MIGHT IN ENGLAND HAVE  
BEEN PREFERRED AGAINST THE CROWN BY PETITION,  
MANIFESTATION OR PLEA OF FIGHT MAY, WITH  
THE CONSENT OF THE ATTORNEY GENERAL OF THE  
FEDERATION, BE PREFERRED IN A HIGH COURT  
HAVING ORIGINAL JURISDICTION IN RESPECT  
THEREOF OR IF THE SUPREME COURT HAS SUCH  
JURISDICTION IN THAT COURT, IN A SUIT  
INSTITUTED BY THE PERSON AS THE SAID ATTORNEY-  
GENERAL MAY DESIGNATE, AS DEFENDANT FOR THE  
PURPOSE."

SECTION 3 THEREFORE GIVES THE RIGHT TO SUE VIA THE  
PETITION OF RIGHT ONLY AS TO THE SAME NATURE AS  
WAS POSSIBLE IN ENGLAND BEFORE THE CROWN PRECEEDINGS  
ACT. THEREFORE, AN ACTION WILL LIE AGAINST THE  
LOCAL GOVERNEMENT VIA THE PETITION OF RIGHT IN  
RESPECT OF CONTRACTUAL LIABILITY. THE ACTION  
COULD BE INSTITUTED BY AN INDIVIDUAL INCLUDING  
A PRIVATE COMPANY IRRESPECTIVE OF THE CITIZENSHIP  
OF THE CLAIMANT. IT SHOULD BE NOTED THAT PETITION  
OR RIGHT CLAIMS IN NIGERIA ARE LIMITED BY CONTRACTUAL  
OBLIGATIONS.

4. SECTIONS 6 AND 7 OF THE SAME LEGISLATION  
DEAL WITH SERVICE DOCUMENTS AND ENFORCEMENT OF  
JUDGMENTS AND ARE AS FOLLOWS:

"6. ALL DOCUMENTS WHICH IN A SUIT OF THE  
SAME NATURE BETWEEN PRIVATE PARTIES WOULD  
BE REQUIRED TO BE SERVED UPON THE DEFENDANT  
SHALL BE DELIVERED AT THE OFFICE OF THE  
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ATTORNEY-GENERAL OF THE FEDERATION."

"7. WHENEVER IN ANY SUCH SUIT A DECREE SHALL  
BE MADE AGAINST THE GOVERNMENT, NO EXECUTION  
SHALL ISSUE THEREON, BUT A COPY OF SUCH  
DECREE UNDER THE SEAL OF THE COURT SHALL  
BE TRANSMITTED BY THE COURT TO THE ATTORNEY-  
GENERAL WHO, IF THE DECREE IS FOR THE PAYMENT  
OF MONEY, SHALL DIRECT THE ISSUE OF A WARRANT

FOR THE AMOUNT AWARDED BY SUCH DECREE TO BE PAID, AND IN THE CASE OF ANY OTHER DECREE SHALL TAKE SUCH MEASURES AS MAY BE NECESSARY TO CAUSE THE SAME TO BE CARRIED INTO EFFECT; OR, IN CASE HE SHALL THINK FIT, HE MAY DIRECT THAT ANY COMPETENT APPEAL SHALL BE ENTERED AND PROSECUTED AGAINST ANY DECREE."

5. REGARDING IN RESPECT OF ACTIONS AGAINST A FOREIGN STATE INSTITUTED BEFORE A NIGERIAN COURT, EMBASSY UNDERSTANDS THAT FOREIGN GOVERNMENTS ARE EXEMPT FROM SUITS AND LEGAL PROCESSES IN NIGERIA AS PROVIDED IN THE RELEVANT STATUTORY POSITION IN THE DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT OF 1962.

6. EMBASSY ATTEMPTING TO DISCUSS MATTER FURTHER WITH GOVERNMENT LAWYER AND WILL REPORT ANY ADDITIONAL INFORMATION SHALL IT BECOMES AVAILABLE.  
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